IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK OF LOUISVILLE, KENTUCKY, - - - - - *Petitioner,*

v.

WILLIAM W. RADFORD, SENIOR, - - - *Respondent.*

ADDITIONAL BRIEF OF DEBTOR IN SUPPORT OF PETITION FOR CERTIORARI.

Another, and a controlling reason why a writ of certiorari should issue herein may be thus stated:

In re Miner, 9 Fed. Supp. 1, it was held, Lindley, J. (E. D. Ill.), that properly interpreted, the Frazier-Lemke Act only extended relief to a debtor to the extent and in the manner resulting from the cooperation of his creditor, and that accordingly, as a creditor could not complain of a result produced by his own action, it followed that the Frazier-Lemke Act, as thus interpreted, was constitutional.

So far as the instant case is concerned, such a ruling is in the interest of the debtor, for if that ruling be upheld, the Court of necessity would be called upon to affirm the decision of the District Court in this case. According to the ruling of Judge Lindley, the lienholder in the case at bar had the privilege of remaining inert, neither consent-

ing under paragraph 3 of the Frazier-Lemke Act nor objecting as hypothesized in paragraph 7 of that Act. If the lienholder in the case at bar, according to the decision of Judge Lindley, had pursued the course just described, then no question of constitutionality would have arisen in the case at bar, for in the event stated, paragraph 7 of the Act would not have become operative, and a question as to its constitutionality could not have arisen. Hence, as the lienholder in the case at bar did that which it was not required to do, that is object under paragraph 7, and thereby put that paragraph in motion, the lienholder cannot complain, as hereinbefore indicated, of the result of its own action.

But the debtor in this case is being aided in his efforts to save his farm by others interested in the interpretation and upholding of the law as a whole. The debtor in this case will not argue at this time as to the correctness or incorrectness of Judge Lindley's opinion. It is sponsored by such eminent legal authorities of the law departments of Mutual Benefit Life Insurance Company, Newark, New Jersey, Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin, New York Life Insurance Company, New York City, and Union Central Life Insurance Company, and deserves a respectful consideration.

But whether right or wrong, Judge Lindley's opinion, if generally adopted, is practically a repeal of the Frazier-Lemke Act, for so long as a recalcitrant or unwilling creditor has it in his power to prevent the law being operative, it is not likely that such creditor will consent under paragraph 3 or object under paragraph 7. If such a result is to follow, it should come promptly, and through a decision of this Court.

On the other hand, as both parties to this proceeding believe, the Lindley opinion is wrong, and that "many an

error by the same example may rush into the state," the sooner this Court overrules that opinion, the better for all concerned.

"Action is the eloquence of the occasion."

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